

## Message Text

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42

ACTION EA-09

INFO OCT-01 ISO-00 EB-07 COME-00 L-03 ITC-01 SP-02 NSC-05

CIAE-00 INR-07 NSAE-00 TRSE-00 /035 W

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R 150848Z NOV 76

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 3597

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E.O. 11652: NA

TAGS: ETRD, JA

SUBJECT: USITC INVESTIGATION IN JAPAN

SUMMARY: GOJ HAS GIVEN CONDITIONAL APPROVAL TO USITC  
CONDUCTING DOCUMENTS SEARCH OF JAPANESE TV PRODUCERS.  
END SUMMARY.

1. MOFA DELIVERED FOLLOWING NOTE VERBALE IN RESPONSE TO  
EMBASSY'S FORMAL REQUEST ON BEHALF OF USITC TO CONDUCT A  
DOCUMENTS SEARCH IN JAPAN AND TO TAKE DEPOSITIONS IF  
NECESSARY OF JAPANESE TV PRODUCERS. (ONLY SUBSTANTIVE  
PORTIONS FOLLOW).

2. "THE GOVERNMENT OF JAPAN CONSIDERS THAT, ACCORDING TO  
THE ESTABLISHED PRINCIPLE OF INTERNATIONAL LAW, PRIOR  
CONSENT OF THE GOVERNMENT OF JAPAN IS REQUIRED FOR THE  
UNITED STATES INTERNATIONAL TRADE COMMISSION (ITC) TO  
CONDUCT SUCH INVESTIGATIONS AS DESCRIBED IN THE NOTE  
REFERRED TO ABOVE.

AS TO THE PRESENT CASE, THE GOVERNMENT OF JAPAN HAS  
NO OBJECTION TO THE ITC OFFICIALS' HAVING CONTACTS  
WITH THOSE JAPANESE ENTERPRISES WHICH HAVE  
VOLUNTARILY AGREED TO MEET THEM FOR THE PURPOSE OF  
EXPLAINING THE BACKGROUND OF THE INVESTIGATIONS BY  
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THE ITC IN THE UNITED STATES. HOWEVER, THE ITC

OFFICIALS ARE NOT TO ORDER THEM TO PRODUCE ANY DOCUMENTS OR TO SEARCH THEM, (SIC) AND THEY ARE NOT TO TAKE WRITTEN STATEMENTS FROM THOSE JAPANESE ENTERPRISES. ANY INFORMATION OBTAINED THROUGH THOSE CONTACTS IN JAPAN MAY NOT BE USED AS EVIDENCE IN MAKING ANY ADMINISTRATIVE OR JUDICIAL DECISIONS."

3. SECOND N. A. DIV. DIRECTOR SAITO PROVIDED FOLLOWING "INFORMAL" ORAL INTERPRETATION OF LAST TWO SENTENCES OF ABOVE NOTE VERBALE THAT PERMITS USITC INVESTIGATION TO GO FORWARD DESPITE APPARENTLY STRICT CONDITIONS. IF THE USITC IDENTIFIES DOCUMENTS IN JAPAN THAT MAY BE RELEVANT TO THE CASE AND THE COMPANIES THEN MAKE THE DOCUMENTS AVAILABLE IN THE US, THE INFORMATION WILL NOT BE CONSTRUED AS HAVING BEEN OBTAINED IN JAPAN. AS FOR "WRITTEN STATEMENTS", THE GOJ WOULD NOT OBJECT IF A WRITTEN RECORD OF QUESTIONS AND ANSWERS IS MADE BY A THIRD PARTY, BUT SAITO STATED IT WOULD BE FAR BETTER IF NO DEPOSITIONS WERE TAKEN. FYI: BOTH WEISBERG AND BRANDT HAVE INDICATED TO US DEPOSITIONS MAY NOT BE NECESSARY.

4. ON BEHALF OF THE GOJ SAITO ALSO MADE THE FOLLOWING FORMAL OBSERVATIONS CONCERNING THE USITC INVESTIGATION: (A) IN THESE KINDS OF CASES (I.E., WHERE EXISTING GOVERNMENT-TO-GOVERNMENT ARRANGEMENTS DO NOT ALREADY EXIST), PRIOR NOTIFICATION WILL BE REQUIRED THROUGH NORMAL DIPLOMATIC CHANNELS REQUESTING FORMAL GOJ APPROVAL; (B) EACH REQUEST WILL BE EXAMINED ON ITS OWN MERITS AND THE PRESENT ACTION SHOULD NOT BE REGARDED AS A PRECEDENT FOR FUTURE DECISIONS; AND (C) THE GOJ REGRETS THAT NO PRIOR NOTICE WAS GIVEN BY THE USG IN TAKING A DEPOSITION IN JAPAN IN EARLY OCTOBER IN CONNECTION WITH A COMPLAINT BROUGHT BEFORE THE USITC BY ZENITH.

5. SAITO ALSO INFORMED US THAT WHEREAS OFFICIALS FROM THE USITC WOULD BE PERMITTED TO CONTACT JAPANESE COMPANIES, LAWYERS FOR THE CLAIMANTS WOULD NOT BE ISSUED VISAS UNLESS THE JAPANESE COMPANIES AGREE TO LIMITED OFFICIAL USE

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SEE THEM IN JAPAN. COMMENT: USITC OFFICIALS ALREADY HERE HAVE BEEN CAREFUL NOT TO MAKE REPRESENTATIONS ON BEHALF OF THE COMPLAINANTS FOR FEAR OF COMPROMISING THEIR NEUTRAL ROLE. WE HAVE NOTED TO SAITO THAT IN THE INTEREST OF FAIRNESS THE COMPLAINANTS OUGHT TO ALSO HAVE REPRESENTATION IN JAPAN. WE GATHER, HOWEVER, THIS MAY HAVE BEEN THE PRICE THE COMPANIES DEMANDED FOR THEIR COOPERATION WITH THE USITC.

IT ALSO OF COURSE SERVES TO REMIND THE COMPLAINANTS  
THAT THE GOJ IS SOVEREIGN IN JAPAN.  
HODGSON

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## Message Attributes

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**Decaption Date:** 01 JAN 1960  
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**Disposition Approved on Date:**  
**Disposition Authority:** ElyME  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
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**Review Date:** 27 MAY 2004  
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